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Third Ave. Ry. Co., 26 N. Y. S. 754; *Watkins* v. *Union Traction Co.*, 194 Pa. St. 564. But a mere error of judgment as to the distance or speed of the car, such as an ordinarily prudent person might make, will not necessarily preclude a recovery. *Lang* v. *Houston, &c., Ry. Co.*, 75 Hun. 151. *Contra*, see *Sutherland* v. *Cleveland, Etc., Ry. Co.*, 148 Ind. 308. (But this was the case of a steam train, which could not be stopped so readily as an electric car. Upon this difference the case is probably distinguishable.) Obviously, where the case is one of error of judgment, the question is for the jury. 2 THOMPSON, NEGLIGENCE [2nd ed.], § 1452. But it does not necessarily follow that the court should properly have left the question to the jury in the principal case. As in every instance of a fact question being taken from the jury, the query is whether reasonable men could arrive at different conclusions on the evidence adduced. So the difference between a mere error of judgment and an act of plain rashness and folly is one of degree rather than of kind. On authority the court was certainly justified in taking the question from the jury by *Hamilton* v. *Third Ave. Ry. Co., supra*, where the car was going but ten miles an hour and was forty feet away, and it was, nevertheless, held contributory negligence *per se* for the plaintiff to attempt to cross. The case of *Petri* v. *Third Ave. Ry. Co.*, 63 N. Y. S. 315, would carry the court even farther than it was necessary to go in this instance, but it seems that that case is not relied upon as law even in New York. Inasmuch as the "scintilla rule" prevails in New York, it is at least plausible that one of the bases of the dissent in the principal case, either conscious or otherwise, is an aversion, engendered of that rule, to taking any fact question from the jury if there is any relevant evidence on the point.

PAYMENT—ACCEPTANCE OF CHECK AS PAYMENT.—P rendered professional services for D for which D gave a check. P sued D for services rendered and D pleaded payment. *Held*, mere receipt of check subsequently dishonored is not effective as payment. *Feinberg* v. *Levine* (Mass., 1921), 129 N. E. 393.

By the great weight of authority, in the absence of special circumstances showing an actual intent the acceptance of a check will not be treated as payment. *Nat'l Bank of Commerce* v. *Chicago Ry.*, 44 Minn. 224, 9 L. R. A. 263; *Born* v. *First Nat. Bank*, 123 Ind. 78, 7 L. R. A. 442. Where an opposite view has been adopted (*Mehlberg* v. *Tisher*, 24 Wis. 607), it has usually been overruled by later cases. *Willow Lumber Co.* v. *Luger Furniture Co.*, 102 Wis. 636; *Gallagher* v. *Ruffing*, 118 Wis. 284. Even under the majority view the debt is suspended until the check is paid or dishonored. *Phoenix Ins. Co.* v. *Allen*, 11 Mich. 501. And under either view the rule is merely one of presumption which must yield to the actual intent of the parties. *Duncan* v. *Kimball*, 3 Wall (U. S.) 37.

QUO WARRANTO—GOVERNOR MAY SUE ONLY IN GENERAL PUBLIC INTERESTS.—Under a Mississippi statute providing that the governor "may bring any proper suit affecting the general public interests," it was *held* that the